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17
18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 U.S. EQUAL EMPLOYMENT
21 OPPORTUNITY COMMISSION,

22 Plaintiff,

23 vs.

24 MACY'S WEST, a division of Macy's
25 Department Stores, Inc.,

26 Defendant.

Case No.: **2:08-cv-03343-FMC-AJWx**

CONSENT DECREE AND
~~PROPOSED~~ ORDER

I.

INTRODUCTION

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3 1. Plaintiff U.S. Equal Employment Opportunity Commission (hereafter
4 “EEOC” or the “Commission”) and Defendant Macy’s West, a division of Macy’s
5 Department Stores, Inc. (hereafter “Macy’s”) (collectively “parties”) hereby
6 stipulate and agree to the entry of this Consent Decree subject to final approval of
7 the court to resolve certain charges of discrimination filed with the EEOC under
8 Title I of the Americans with Disabilities Act of 1990 (“ADA”) alleging unlawful
9 employment practices on the basis of disability and to provide relief to Charging
10 Party Donna Castile (hereinafter “Castile”) and additional claimant Marilyn Hall
11 (“Hall”) who assert they were adversely affected by such practices arising out of
12 Charge No. 340-2004-02533 filed by Charles Hardy (“Hardy”) with the EEOC on
13 July 23, 2004 and Charge No. 340-2005-01280 filed by Castile with the EEOC on
14 February 10, 2005.

15 2. This Consent Decree (“Decree”) represents a compromise of disputed
16 claims the parties recognize would require protracted and costly litigation to
17 determine. Macy’s denies it has engaged in any unlawful conduct as alleged in the
18 charges and its entry into this Decree is not and may not be used by any person or
19 entity in any proceeding as an admission or evidence that Macy’s has on any
20 occasion engaged in any unlawful conduct as alleged in the charge.

21 3. This Decree constitutes the entire agreement among the parties and
22 supersedes all prior agreements, written or oral, between the EEOC and Macy’s.
23 In the event any provision or term of this Decree is determined to be or is rendered
24 invalid or unenforceable, all other provisions and terms of this Decree shall remain
25 unaffected to the extent permitted by law.

26 4. Without admitting the claims or defenses of each other, the parties
27 have now agreed that, in order to avoid uncertain, protracted and costly litigation,
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1 this controversy should be resolved through entry of this Decree. As indicated by
2 the signature of counsel and the parties at the end of this document, the parties
3 have entered into this Decree and consented to the entry of this document as a final
4 Consent Decree.

5 5. The court shall have continuing jurisdiction to enforce the specific
6 provisions of this Decree and supervise the administration and distribution of the
7 settlement sums if necessary.

8 II.

9 MODIFICATION AND SEVERABILITY

10 6. This Decree constitutes the complete understanding of the parties with
11 respect to the matters contained herein. No waiver, modification or amendment of
12 any provision of this Decree will be effective unless made in writing and signed by
13 an authorized representative of each of the parties and with the approval of the
14 court. If the proposed Decree is not approved by the court, the parties shall make
15 reasonable good faith efforts to modify the Decree so as to gain the court's
16 approval. This good faith effort in no way requires Macy's to increase its overall
17 monetary or other economic obligations set forth in the Decree. If the parties are
18 unable to modify the settlement so as to gain the court's approval, the EEOC may
19 proceed as if there had been no settlement.

20 7. If one or more provisions of the Decree are rendered unlawful or
21 unenforceable during the term of the Decree, the parties shall make good faith
22 efforts to agree upon appropriate amendments to this Decree in order to effectuate
23 the purposes of the Decree. In any event, the remaining provisions will remain in
24 full force and effect unless the purposes of the Decree cannot, despite the parties'
25 best efforts, be achieved.

1 discretion of the EEOC. The EEOC shall forward to Macy's the address and
 2 amount(s) to be paid and distributed to Castile and Hall. Within two (2) weeks of
 3 its receipt of this information from the EEOC, Macy's shall forward checks to
 4 Castile and Hall consistent with such information. Simultaneously, copies of the
 5 checks shall be submitted to the EEOC c/o the Regional Attorney, Anna Y. Park,
 6 U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th
 7 Floor, Los Angeles, CA. 90012. These amounts shall be designated as
 8 compensatory damages.

9
 10 23. For each claimant who receives monetary relief under this Decree,
 11 Macy's shall prepare and distribute a 1099 tax reporting form and shall make
 12 appropriate reports to the Internal Revenue Service and other tax authorities for the
 13 amounts designated as compensatory damages.

14 24. \$5,000.00 of the \$80,000.00 will be donated by Macy's to a non-profit
 15 organization of its choosing involved with the hearing impaired community. The
 16 non-profit organization shall be notified by the EEOC that Macy's donation is
 17 being made consistent with this Decree. Macy's shall notify the EEOC within ten
 18 (10) days from the effective date of this Decree as to the identity of the non-profit
 19 organization who will receive this donation. The EEOC shall disperse Macy's
 20 donation with a letter to the non-profit organization consistent with this paragraph
 21 within ten (10) days of receiving Macy's donation.

22 Should any monetary relief not be claimed by Castile and/or Hall, any
 23 residual shall be donated by Macy's to the same non-profit organization referenced
 24 above in this paragraph.

25 **B. Reinstatement**

26 25. Macy's agrees to reinstate Castile to active employment as of April
 27 21, 2008 to a part-time position on the sign team which guarantees at least 20
 28 hours of work a week with all, if any, appropriate benefits associated with that

1 position, including, but not limited to, health benefits, at its Baldwin Hills store at a
2 starting hourly rate of pay of \$8.15. Castile will be entitled to all the benefits of
3 any other employee who holds the same position including, but not limited to, any
4 increases in compensation if she meets the qualifications.

5 26. In addition to the foregoing, Castile shall have priority for the next
6 non-lead full time open position on the sign team or as a fitting room checker,
7 price changer, receiving clerk or merchandiser at Macy's Baldwin Hills store for as
8 long as she remains actively employed by Macy's or she declines such an offer,
9 whichever occurs first. Should Macy's offer Castile such a position, Macy's shall
10 notify both Castile and the EEOC in writing of the offer. Within ten (10) days of
11 her receipt of the offer, Castile and/or the EEOC on her behalf shall notify Macy's
12 in writing whether she wishes to accept the offered position. If Castile or the
13 EEOC on her behalf fail to notify Macy's in writing within that time period that
14 Castile accepts the position, Castile forfeits her priority for any later such position.
15 Castile will remain eligible for any other positions consistent with Macy's
16 practices, policies and procedures.

17 27. Macy's will designate the Human Resources Manager at the store(s)
18 where she is actively employed for Castile to contact to request reasonable
19 accommodations. Castile may request a reasonable accommodation in writing
20 and/or verbally. If she makes a non-written request for an accommodation, Macy's
21 will document the request in writing and have Castile sign it with an interpreter
22 present to explain the accommodation to Castile. Macy's agrees to maintain
23 records of all of Castile's reasonable accommodation inquiries, whether initiated
24 by request of Castile or at the instigation of Macy's, tracked by the date the
25 accommodation inquiry first came to Macy's attention, the identity of the person(s)
26 who explored possible reasonable accommodations, all accommodations suggested
27 by Castile, all accommodations considered by Macy's, reasons any possible
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1 reasonable accommodation was rejected and/or adopted, if any, and the dates of
2 each such interaction.

3 28. Macy's further agrees to provide reasonable accommodations to
4 Castile including, but not limited to, TTY, video conference or a certified ASL
5 (American Sign Language) interpreter for all employee counseling or discipline
6 meetings, store-wide meetings scheduled at least two (2) full calendar days prior to
7 being conducted, formal training, semi-annual and annual work performance
8 evaluations and appraisals and any other reasonable accommodation that may be
9 required consistent with the ADA.

10 29. Macy's agrees Hall's employment records shall reflect a voluntary
11 separation from employment and she is eligible for reemployment with Macy's in
12 the future.

14 VII.

15 GENERAL INJUNCTIVE RELIEF

16 A. Non-Discrimination

17 30. Macy's, its officers, authorized agents, managers, supervisory
18 employees, lead employees or team leaders, successors, assigns and all persons in
19 active concert or participation with them are enjoined for the duration of the
20 Decree from discriminating against any individual based upon a hearing-impaired
21 disability or failing to reasonably accommodate an individual with a hearing-
22 impaired disability within the meaning of the ADA as defined in paragraph 32(h)
23 of this Decree.

24 B. Retaliation

25 31. Macy's, its officers, authorized agents, managers, supervisory
26 employees, lead employees or team leaders, successors, assigns and all persons in
27 active concert or participation with them hereby agree not to engage in, implement
28 or permit any action, policy or practice with the purpose of retaliating against any

former or current employee of Macy's, or either of them, or applicant of Macy's because he/she has in the past or during the term of this Decree at any of its Southern California stores for the first year and Los Angeles County stores for the second year of this Decree: (a) opposed any practice made unlawful under the ADA; (b) filed a charge of discrimination with the EEOC alleging a violation of the ADA; (c) testified or participated in any manner in any investigation (including, without limitation, any internal investigation undertaken by Macy's) or proceeding in connection with such a charge, this Decree and/or relating to any claim or charge alleging an ADA violation; (d) was identified as a possible witness or claimant in such a matter; (e) asserted any rights under this Decree; or (f) sought and/or received any relief in accordance with this Decree.

C. Adoption And/Or Revision of Macy's West Policies Concerning Disability Discrimination and Retaliation

32. Macy's shall immediately review and, if necessary to comply with this Decree, revise its existing policies at least as they pertain to its California stores on disability discrimination and retaliation and provide a copy of such policies to the EEOC within thirty (30) days after the effective date of this Decree. The policies shall include:

- a. A clear statement explaining the prohibited conduct;
- b. Assurance that employees who complain about disability discrimination/retaliation or provide information related to such complaints will be protected against retaliation for making such complaints;
- c. A clearly described complaint process that provides accessible and confidential avenues of complaint with contact information including name (if applicable), address, and telephone number of persons internal to Macy's (i.e. human resources) and external to Macy's (i.e. EEOC) available to handle complaints to whom employees may report disability discrimination and/or

1 retaliation including a written statement the employee may report the
2 discriminatory/retaliatory behavior to designated persons outside their chain of
3 management;

4 d. Assurance that Macy's will protect the confidentiality of
5 discrimination and retaliation complaints, and accommodation requests to the
6 extent possible;

7 e. A complaint process that provides a prompt, thorough and
8 impartial investigation;

9 f. A procedure for communicating with the complainant in
10 writing regarding the status of the complaint/investigation, results of the
11 investigation and any remedial action taken; and

12 g. Assurance that Macy's will take immediate and appropriate
13 corrective action if and when it determines that discrimination and/or retaliation
14 has occurred.

15 h. Assurance that Macy's will provide a reasonable
16 accommodation, if necessary, and required under the ADA for all hearing impaired
17 applicants for employment and employees who are disabled within the meaning of
18 the ADA at all Macy's stores in Southern California (defined collectively as
19 Ventura, Los Angeles, Orange, San Bernardino and Riverside Counties) as
20 required under the ADA. At the store Castile is reinstated to consistent with
21 paragraph 25 of the Decree, Macy's will additionally provide Castile during this
22 Decree a certified ASL (American Sign Language) interpreter ("interpreter") for
23 all employee counseling or discipline meetings, store-wide meetings scheduled at
24 least two (2) full calendar days prior to being conducted, semi-annual and annual
25 work performance evaluations and appraisals and/or at initial and later special
26 training in the performance of the employee's duties and responsibilities. In the
27 event this is not reasonable under the circumstances or would result in an undue
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1 hardship consistent with the ADA, Macy's will, within a 14 calendar days
2 thereafter, provide such information individually to the impacted employee
3 through either an interpreter or video remote interpreting.

4 33. Before such policies are distributed, the EEOC shall submit its written
5 comments, if any, about them to Macy's within thirty (30) days of its receipt of the
6 policies which Macy's shall reasonably and in good faith review, consider and
7 comment upon in determining whether to make any revisions to such policies.
8 Should the policies not require any revision, Macy's shall confirm distribution of
9 the policies to the EEOC no later than sixty (60) days after this thirty (30) day
10 period lapses and shall distribute such policies to all of its officers and managers,
11 supervisory employees, human resources employees and hourly group lead
12 employees then actively at work at any of its California stores and such policies
13 shall be included later in any pertinent written policies or employee manuals or
14 handbooks periodically distributed by Macy's to employees working in any of its
15 California stores during the term of this Decree. The policies shall be distributed
16 to all Macy's employees actively working and/or who later return to active
17 employment and are hired to work in a California store during the term of this
18 Decree.

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20 34. Throughout the term of this Decree, Macy's shall also post a poster in
21 a place that is conspicuous and accessible to all employees at all of its Southern
22 California stores in a legible font that is a minimum of 15 points in size solely
23 dedicated to disabled employees which will include, but not be limited to, an 800
24 phone number that such employees may call if they wish to complain about
25 disability discrimination and/or retaliation.

26 **D. Training**

27 35. After the effective date of this Decree, all of Macy's managers,
28 supervisory employees, human resources employees and hourly group lead

1 employees actively working at any of its Southern California stores shall be
2 required to attend a live training program of at least one (1) hour in duration during
3 the first year of this Decree. Any impacted employee who fails to attend such
4 training shall receive training individually within thirty (30) days thereafter. All
5 such employees later hired, promoted or who return to active employment from
6 leave to such a position in a Southern California store during the first year of this
7 Decree shall receive the same training within ninety (90) days of his/her hire,
8 promotion or return from leave for the first year of this Decree.
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10 36. During the second year of this Decree, all of Macy's managers,
11 supervisory employees, human resources employees and hourly group lead
12 employees actively working at any of its Los Angeles County stores shall be
13 required to participate in a similar training program which, will include a live
14 question and answer training component which may be "same time" or a
15 comparable electronic interactive system. At the conclusion of such training,
16 participants will be given contact information and avenues for obtaining additional
17 information and asking questions. Any such employee who fails to participate in
18 such training shall receive such training individually within thirty (30) days
19 thereafter. All such employees later hired, promoted or who return to active
20 employment from leave to such a position in a Los Angeles County store during
21 the second year of this Decree shall receive the same training within ninety (90)
22 days of his/her hire, promotion or return from leave for the second year of this
23 Decree.

24 37. At a minimum, this disability non-discrimination and retaliation
25 training program shall include the following:

26 a. Instruction on the requirements of the ADA including
27 reasonable accommodation requests and responsibilities;
28

1 b. A review of Macy's disability non-discrimination, non-
2 retaliation and reasonable accommodation policies;

3 c. Dealing with disability discrimination and retaliation
4 complaints and reasonable accommodation requests; and

5 d. Addressing how to recognize requests for accommodation
6 under the ADA, how to engage in the interactive process and how to go about
7 accommodating individuals with a disability.

8 38. All such employees shall verify their attendance at such training in
9 writing.

10 39. Within ninety (90) days after the effective date of this Decree, Macy's
11 shall provide training on the ADA and Macy's ADA policies and complaint
12 procedures to all of its known hearing-impaired staff and non-managerial
13 employees working at any of its Southern California stores during which a certified
14 ASL Interpreter will be present or video remote interpreting will be provided. This
15 training shall also occur in Los Angeles County stores during the second year of
16 the Decree where a certified ASL interpreter will be present or video remote
17 interpreting will be provided. At the conclusion of such training, participants will
18 be given contact information and sources for obtaining additional information and
19 asking questions. Any impacted employee who fails to participate in such training
20 shall receive such training individually within thirty (30) days thereafter. At a
21 minimum, this training shall include the following:

22 a. Instruction on the requirements of the ADA including
23 reasonable accommodation requests and responsibilities and

24 b. A review of Macy's disability non-discrimination, non-
25 retaliation and reasonable accommodation policies.

26 40. Within thirty (30) days after the effective date of this Decree, Macy's
27 shall submit to the EEOC a description of all of the above training to be provided
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1 and an outline of the curriculum developed for the trainees. Before such training
2 materials are later utilized by Macy's for training, the EEOC shall submit its
3 written comments, if any, about them to Macy's within thirty (30) days of its
4 receipt which Macy's shall reasonably and in good faith review, consider and
5 comment upon in determining whether to make any revisions to such training
6 materials. Should the training materials not require any revision, Macy's shall
7 commence such training no later than thirty (30) days after this thirty (30) day
8 period lapses. Macy's shall give the EEOC a minimum of five (5) business days'
9 advance written notice of the date, time and location of each training program to be
10 provided pursuant to this Decree and agrees that an EEOC representative may
11 attend the training program. Where practicable, the EEOC shall inform Macy's
12 prior to attending the training.
13

14 41. Macy's shall take reasonable measures designed to hold its managers,
15 supervisory employees, lead employees or team leaders, and human resources
16 employees accountable for complying with its disability non-discrimination and
17 non-retaliation policies and procedures.

18 E. Complaint Procedures

19 42. Within thirty (30) days of the effective date of this Decree, Macy's
20 shall review its existing internal complaint response procedure presently in effect
21 in California and, if necessary, revise or develop the internal complaint procedure
22 which will provide for the filing, investigation and, if appropriate, remedying of
23 complaints of disability discrimination or retaliation. Macy's complaint procedure
24 and the identification of persons to whom complaints of disability discrimination
25 or retaliation shall be made will be included in the training conducted by Macy's
26 described above.

27 43. Additionally, Macy's shall, for the term of this Decree,
28

1 a. Publicize the complaint procedure as described above and
2 consistent with its present policies;

3 b. Divisionally track and collect all disability discrimination and
4 retaliation complaints filed thereunder;

5 c. Investigate and resolve such complaints in a timely and
6 effective manner;

7 d. Retain records regarding resolution of all such complaints; and
8

9
10 44. The internal complaint procedure shall incorporate the following
11 elements:

12 a. A policy describing how investigations will be conducted;

13 b. A prompt commencement and thorough investigation by a
14 person trained to conduct such investigations who is not connected with the
15 complaint;

16 c. A statement the investigation should include interviews of all
17 relevant witnesses, including the complainant, and review of all relevant
18 documents;

19 d. A written record of all investigatory steps and any findings,
20 conclusions and actions taken;

21 e. Provision for the reasonably prompt resolution of such
22 complaints;

23 f. An opportunity for the complainant to review and respond to
24 tentative findings, except in those circumstances in which it is necessary to take
25 immediate action;

26 g. Confidentiality of the complaint and investigation to the extent
27 possible;
28

1 h. Appropriate communication of the final conclusions of the
2 investigation provided to the complainant;

3 i. An appeal procedure to an appropriate designated Macy's
4 representative should the complainant be dissatisfied with the results of the
5 investigation; and

6 j. A notice stating employees or applicants complaining of
7 disability discrimination or retaliation may use Macy's internal complaint
8 procedure and/or file charges with the EEOC or California's Department of Fair
9 Employment and Housing ("DFEH"). The notice shall also state that filing an
10 internal complaint does not relieve the complainant of meeting any applicable
11 deadlines for the filing of a charge or complaint with the EEOC or California's
12 DFEH.

13
14 45. Macy's may encourage resolution of such internal complaints at a
15 local level prior to investigation but not require such informal resolution. A
16 complainant shall not be required to first report the complaint to a person who is
17 accused of the inappropriate conduct to invoke the internal complaint procedure.

18 46. The internal complaint procedure will permit, but not require, an
19 employee to initiate the complaint process by submitting a written complaint on a
20 form designed for the purpose.

21 47. Macy's will maintain a policy of non-discrimination of hearing-
22 impaired disabled employees or applicants for employment and equal treatment
23 including a policy of zero tolerance for unlawful disability discrimination and
24 retaliation in all of its employment practices.

25 48. The internal complaint procedure is not intended to supplant the right
26 of any employee to file a charge or complaint of disability discrimination or
27 retaliation under any available municipal, state or federal law.
28

1 c. Procedure for tracking complaints of disability discrimination
2 and retaliation, identifying the need for reasonable accommodation and processes
3 by which potential accommodations are considered; and

4 52. Subsequent Reports: Every year for the duration of the Decree after
5 the initial report described above has been submitted, Macy's shall provide the
6 EEOC with a report describing the foregoing:

7 a. All complaints of disability discrimination, including
8 complaints alleging a failure to honor an ADA reasonable accommodation request,
9 and retaliation for making such a complaint made by any applicant for employment
10 or employee working at any Macy's store in Southern California for the first year
11 of this Decree and in Los Angeles County for the second year of this Decree
12 tracked by date, the identity of the person who processed the complaint and the
13 resolution of the complaint;

14 b. All reasonable accommodation inquiries, whether initiated by
15 request of the employee or at the instigation of Macy's, tracked by the date the
16 accommodation inquiry first came to Macy's attention, the identity of the person(s)
17 who explored potential accommodations, all accommodations suggested by the
18 employee, all accommodations considered by Macy's, reasons any potential
19 accommodation was rejected and/or adopted, if any, and the dates of each
20 interaction set forth above at any Southern California store for the first year of this
21 Decree and at any Los Angeles County store for the second year of this Decree;

22 c. Training conducted by Macy's on ADA anti-discrimination and
23 anti-retaliation laws and requirements at its Southern California stores for the first
24 year of this Decree and at its Los Angeles County stores for the second year of this
25 decree;

26 d. All complaints and non-privileged documents concerning the
27 investigation or resolution of any complaint of disability discrimination or
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1 retaliation at any Macy's store in Southern California for the first year of this
 2 Decree and at any Macy's Los Angeles County store for the second year of this
 3 Decree generated during the duration of the Decree and the identities of such
 4 individuals involved;

5 e. Documents verifying the occurrence of all training sessions and
 6 the names and positions of all attendees who attended each training session as
 7 required under this Decree;

8 f. All documents, if any, monitoring what was done, if anything,
 9 for repeated or related complaints;

10 h. A description detailing any changes in the procedures or record-
 11 keeping methods for the divisional tracking of disability discrimination or
 12 retaliation complaints and the monitoring of such complaints within any Macy's
 13 store in Southern California for the first year of this Decree and within any Macy's
 14 Los Angeles County store for the second year of this Decree within thirty (30) days
 15 after implementing such changes.
 16

17 IX.

18 DIVISIONAL MONITORING

19 53. During the term of this Decree, Macy's California disability
 20 management department (Director-Health, Safety and Disability, Management and
 21 Disability Managers) shall:

22 a. Develop and distribute where, when and to whom appropriate a
 23 list of all known hearing-impaired employees in Southern California;

24 b. Assist in providing and arranging for ADA- required reasonable
 25 accommodations for such employees and applicants for employment;

26 c. Conduct at least quarterly conference calls with Macy's human
 27 resources executives for the purpose of monitoring and ensuring compliance with
 28 all of the terms of this Decree; and

1 d. Determine the existence of, review, address and retain records
2 concerning all disability discrimination and retaliation complaints and reasonable
3 accommodation requests considered, made and/or pending in such quarter.

4 **X.**

5 **COSTS OF ADMINISTRATION AND IMPLEMENTATION OF CONSENT**
6 **DECREE**

7 54. Macy's shall bear all costs associated with the administration and
8 implementation of its obligations under this Decree.

9 **XI.**

10 **COSTS AND ATTORNEY'S FEES**

11 55. Each party shall bear its own costs of suit and attorneys' fees in
12 connection with this matter unless otherwise stated in this Decree.

13 **XII.**

14 **MISCELLANEOUS PROVISIONS**

15 56. During the term of this Decree, Macy's shall provide any potential
16 successor-in-interest with a copy of this Decree within a reasonable time of not less
17 than thirty (30) days prior to the execution of any agreement for acquisition or
18 assumption of control of any or all of Macy's facilities or any other material
19 change in corporate structure and shall simultaneously inform the EEOC of same.

20 57. During the term of this Decree, Macy's and its successors shall assure
21 each of its officers, managers, supervisory employees, human resources employees
22 and hourly group lead employees is aware of any material term(s) of this Decree
23 which may be related to his/her job duties.

24 58. The parties acknowledge Macy's shall not be accused or found to
25 have breached this Decree if it reasonably and in good faith attempts to fully and
26 fairly comply with its obligations and responsibilities under the Decree.
27
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1 **~~[PROPOSED]~~ ORDER**

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3 **GOOD CAUSE APPEARING:**

4 **IT IS ORDERED THAT:**

5 The court hereby retains jurisdiction and declares that the provisions of the
6 foregoing Consent Decree are hereby approved and compliance with all provisions
7 thereof is fair and adequate.
8

9 **IT IS SO ORDERED.**

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11 Date: May 27, 2008

12 _____,
13 The Honorable United States
14 District Court Judge
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